

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burton et al (US 2004/0193068) as modified by Feldman et al (US 5,626,140).

Burton et al disclose a system and a method of using said system comprising two or more health monitor devices having different operating principles that generate signals reflecting a similar physiological condition, at least two of the monitor devices providing orthogonally redundant information regarding at least one physiological condition (paragraph [0003]); a user interface (paragraph [0144]); a drug delivery controller (paragraph [0219]); one or more effectors (paragraph [0002]) for ensuring patient safety and clinician awareness; and a controller including parameters of at least one monitored condition (paragraph [0026]); wherein the controller compares the monitor signals to control the effector based on the results of the comparison and in accordance with the parameters.

Burton et al disclose the claimed invention except for disclosing the controller determining whether the monitored data is reliable by determining if the monitors are in agreements, wherein some the monitor devices are ascribed point values as to at least one their importance and accuracy in monitoring a patient parameter. Feldman et al teach in column 1, line 12- column 2, line 6 that it is known to employ a system and method for sensor fusion using multiple physiological sensors monitoring the same physiological condition using a system of analyzing the sensor readings which accounts for variability and error in the readings using confidence levels. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device and method of Burton et al with the teachings of Feldman et al since such a modification would help ensure that the control signals being generated were based on as accurate of a representation of a patient's physiological state as possible.

***Response to Arguments***

Applicant's arguments filed 5/5/10 have been fully considered but they are not persuasive. Applicant argues that Burton does not disclose "an electronic controller including parameters of at least one of said monitored patient physiological conditions ... wherein said electronic controller... controls the effector based on the results of the comparison and in accordance with the parameters" as claimed in the present invention because Burton does not teach the electronic controller including parameters which represent one or more safe and undesirable physiological conditions. Examiner disagrees. Burton discloses programming the controller with parameters and thresholds for physiological conditions which are monitored, these parameters and thresholds being incorporated into the controller in such a way that the system can alert the user and correct its course of action when undesirable readings are obtained so as to ensure the safety of the patient.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to CATHERINE N. WITCZAK whose telephone number is (571)272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Kevin C. Simons/

Supervisory Patent Examiner, Art Unit 3767